

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

KAIVEN WESLEY

§

v.

§

CIVIL ACTION NO. 5:24-CV-98-JRG-JBB

DIRECTOR, TDCJ-CID

§

ORDER

The Petitioner Kaiven Wesley, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed an application for the writ of habeas corpus under 28 U.S.C. § 2254 complaining of the legality of his conviction. Docket No. 1. The case was referred to United States Magistrate Judge J. Boone Baxter in accordance with 28 U.S.C. § 636.

On November 7, 2024, the Magistrate Judge issued a Report and Recommendation, recommending Petitioner's motion for a restraining order (Docket No. 15) and motion for an order granting access to his tablet, construed as a request for injunctive relief (Docket No. 14), be denied. Docket No. 16. A copy of the Report was sent to Petitioner at his last known address, return receipt requested, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420-21 and n.9 (5th Cir. 2019).

Because no objections have been received, Petitioner is barred from *de novo* review by the District Judge of the Magistrate Judge's proposed findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville*,


Texas, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 16) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Petitioner's motion for a restraining order (Docket No. 15) and motion for an order granting access to his tablet, construed as a request for injunctive relief (Docket No. 14), are **DENIED**.

So ORDERED and SIGNED this 13th day of December, 2024.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE